

MAR 24 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALVIN ELIZARES,

Petitioner - Appellant,

v.

ROBERT PARKER; et al.,

Respondents - Appellees.

No. 07-16491

D.C. No. CV-06-00465-HG

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Hawaii
Helen Gillmor, District Judge, Presiding

Submitted March 18, 2009^{**}

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Hawaii state prisoner Calvin Elizares appeals pro se from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Elizares contends that his Sixth Amendment right to an impartial jury was violated when a juror received extrinsic information that Elizares was previously convicted of murder and the juror failed to disclose this information until after the verdict was rendered. We conclude that the state court's decision rejecting this claim was neither contrary to, nor involved an unreasonable application of, clearly established federal law. *See* 28 U.S.C. § 2254(d)(1); *see also* *Bayramoglu v. Estelle*, 806 F.2d 880, 887 (9th Cir. 1986) (citing *Fahy v. Connecticut*, 375 U.S. 85, 86-87 (1963)); *Smith v. Phillips*, 455 U.S. 209, 215 (1982). We also conclude that the state court's decision did not result in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. *See* 28 U.S.C. § 2254(d)(2).

To the extent that Elizares requests an evidentiary hearing, we deny the request. *See Gonzalez v. Pliler*, 341 F.3d 897, 903 (9th Cir. 2003).

AFFIRMED.